

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

DENNIS & JODIE DeMUTH,)	
)	
Appellants,)	SHB No. 89-63
)	
v.)	
)	FINAL FINDINGS OF FACT,
SAN JUAN COUNTY, GONSERS and)	CONCLUSIONS OF LAW
MEREDITHS,)	AND ORDER (AMENDED)
)	
Respondents.)	
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The San Juan County Board of Commissioners unanimously approved a shoreline substantial development permit for Thomas and Stephanie Gonser, and E. Palmer and Irene Meredith, to build a joint-use dock between their lots on E. Harbor Drive, within Griffin Bay at Cape San Juan, on San Juan Island.

On November 6, 1989, Dennis and Jodie DeMuth, who are neighbors, filed an appeal with the Shorelines Hearings Board, contesting San Juan County's issuance of the substantial development permit.

A hearing on the merits was held on April 4, 1990 in the Town of Friday Harbor, Washington, in the San Juan County Commissioners' Hearings Room. The Shorelines Hearings Board members made a site visit just prior to the hearing. At the hearing, Board members present were: Harold S. Zimmerman, presiding; Judith A. Bendor, Chair; Wick Dufford, Robert Schofield and Gordon Crandall.

Appellants Dennis and Jodie DeMuth were present and represented themselves. Respondent San Juan County was represented by Deputy

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER (AMENDED)
SHB No. 89-63 (1)

1 Prosecutor Carol Morris. Respondents Palmer and Irene Meredith, and
2 Thomas and Stephanie Gonser were represented by Thomas Gonser. Court
3 reporter Kim L. Otis, registered professional reporter with Gene
4 Barker and Associates, recorded the proceedings.

5 Opening statements were made. Witnesses were sworn and
6 testified. Exhibits were admitted and examined. Closing argument was
7 heard and proposed Findings were filed. On August 10, 1990 our
8 decision issued. Subsequently a Motion to Reconsider was filed and
9 response received. (See Order on Reconsideration.) Having reviewed
10 the evidence and counsel's contentions, and having deliberated the
11 Shorelines Hearings Board makes these:

12 FINDINGS OF FACT

13 I

14 Appellants Jodie and Dennis DeMuth own a house at 4117 E. Harbor
15 Drive, located on Lot 21 in the Cape San Juan subdivision on Griffin
16 Bay, San Juan Island. They purchased the property on February 14,
17 1989.

18 II

19 From their home the DeMuths have an unencumbered view of Griffin
20 Bay to the west and of federal and state recreation lands on the
21 opposite shore.

22 III

23 Among the DeMuths' neighbors are Tom and Stephanie Gonser, who
24 own Lots 23 and 24. The Gonsers reside in a home on Lot 23, 4861 E.
25 Harbor Drive. They plan to build a new permanent home on Lot 24 and
26 sell Lot 23.

1 Palmer and Irene Meredith own Lot 25 and have lived there
2 full-time for 13 years.

3 IV

4 The dock proposal under consideration is a joint-use facility to
5 be built from the bank at the boundary line between Lots 24 and 25.
6 The Palmers have waited since they purchased for neighbors to join
7 them in a dock project. The Gonsers are eager to cooperate in the
8 development.

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10 The properties of the DeMuths, the Gonsers and the Merediths all
11 lie just north of an inner harbor area called Fish Creek. Within Fish
12 Creek are a community dock facility and a number of offshore mooring
13 buoys.

14 VI

15 The Gonsers presently have a 27-foot power boat and a 16-foot
16 skiff. They have a mooring buoy in open waters in front of Lot 23.
17 They also rent space at the community dock in Fish Creek about one
18 mile away (by road).

19 Strong winds and resulting waves can make tying the boat to the
20 mooring buoy dangerous.

VII

The Merediths have owned a 36-foot sailboat for many years. They have a lease with the Washington Department of Natural Resources ("DNR") for a mooring buoy in Fish Creek inlet. They drive to the community dock and take a dinghy out to their sailboat.

VIII

There are 150 platted lots in the Cape San Juan subdivision; approximately 90 have been developed. All property owners are eligible to apply for space at the community dock in Fish Creek inlet. The community dock presently accommodates 29 boats, is oversubscribed and has a waiting list.

The community dock commission has a plan to expand the facilities to accommodate 49 boats. The financing and approval process have not yet been completed. Estimated cost of the expansion is \$110,000 to \$120,000.

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There are nine buoy locations leased from DNR (including the Merediths') in Fish Creek inlet. All the sites are taken.

In recent years, residential construction and recreational boating have increased at Cape San Juan, and are expected to continue to do so until the subdivision is fully built out.

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2 The terrain in front of Gonsers' Lot 24 and Merediths' Lot 25 is
3 steep and rocky. There is no direct access to the water from these
4 two lots. Because of the terrain, it is not feasible to launch a
5 small boat from the shores of Lots 24 and 25. However, there is a low
6 bank beach in front of Gonsers' Lot 23, which is accessed from a short
7 staircase. A dinghy could be launched from that property.

8 We find that the alternative of mooring to a buoy is not feasible
9 for Lots 24 and 25.

10 XI

11 As approved by San Juan County, the proposed dock would include
12 the following: a 5 x 30 foot fixed pier connected to a 4 x 40 foot
13 ramp, which would attach to a 10 x 40 foot float. Vertical pilings
14 would support the pier at an elevation about 10 feet above
15 mean-higher-high-water. The float would be anchored by two sets of
16 pilings, the shoreward piling height to be 21 feet above
17 mean-lower-low water and the seaward piling to be 16 feet high. The
18 ramp and float are to be built at an angle to the pier, aligned
19 towards the large wave action and wind from the northwest.

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21 The County also imposed the following conditions: lighting shall
22 be limited to incandescent fixtures, with the light sources shielded
23 from view and directed downward, and not to exceed three feet in
24 height above the pier or float dock; boats moored at the dock cannot
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1 be used for overnight accommodations; if an area of potential
2 archaeological significance is uncovered during excavation or
3 development, all activity must stop and the Planning Department must
4 be notified.

5 In addition, an agreement was required as follows:

6 *Prior to issuance of the permit, the submitted joint*
7 *use agreement dated May 12, 1989 shall be recorded in*
8 *the Auditor's Office and shall run with the land and*
9 *be binding on the present owners and their successors*
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12 The agreement referred to focuses on the rights of the Gonsers and
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14 agreement provides that Lot 23's owner could obtain joint use of the
15 dock upon request, subject to purchase of a one-third interest in the
16 facility, the purchase of an easement across Lot 24 and the obtaining
17 of permits for a seaward extension, not more than 25 feet. The burden
18 is on Lot 23's owner to apply for the necessary permits to obtain the
19 extension.

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21 If the proposed dock were constructed, the Gonsers would
22 relinquish their current space at the community facility in Fish
23 Creek. The Merediths intend to keep their mooring buoy for winter use,
24 but would make it available for others during the balance of the year.

25 The effect of the project would be, therefore, to free up some

1 space in Fish Creek inlet for other boaters. The benefit thus
2 conferred would be of a long-term nature.

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4 On the record before us, it is not clear that the Gonsers and
5 Merediths will always be able to accommodate their boats within Fish
6 Creek Inlet. However, it is clear that the present facilities within
7 Fish Creek are inadequate to handle the demand imposed by the current
8 level of development of the subdivision. Additional build-out at Cape
9 San Juan will only exacerbate this situation. Even if expansion plans
10 for the community dock are realized, the capacity will still likely be
11 less than the ultimate demand.

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13 Within the subdivision, the proposed project will be the first
14 dock outside of Fish Creek inlet. The view to Griffin Bay afforded
15 waterfront properties close to the site is now of a largely natural
16 looking setting. From the DeMuth's, the dock would intrude into a part
17 of this view. We are unable to find, however, that the project as
18 proposed would represent an aesthetic affront or significantly
19 compromise the quality of the shoreline environment.

20 XVII

21 We are not convinced that the physical conditions of the area are
22 likely to lead to the proliferation of individual docks outside of Fish
23

1 Creek. The advantage of the inlet is its relatively protected
2 character.

3 Moreover, any precedential effect which the instant project might
4 have would be for a joint-use, not a single-use facility.

5 XVIII

6 Under the San Juan County Master Program, the uplands of the
7 project site lie within an environment designated "suburban." Seaward
8 of the ordinary high water mark the environmental designation is
9 "aquatic."

10 XIX

11 Any Conclusion of Law deemed a Finding of Fact is hereby adopted
12 as such.

13 From these Findings of Fact, the Board comes to these Conclusions
14 of Law:

15 CONCLUSIONS OF LAW

16 I

17 The Shorelines Hearings Board has jurisdiction over the parties
18 and subject matter of this action. RCW 90.58.180. Appellants have the
19 burden of proof. RCW 90.58.140(7). We review substantial development
20 permits for consistency with the applicable master program and the
21 provisions of the Shoreline Management Act (SMA). RCW 90.58.140(2)(b).

22 II

23 Subsection 16.40.508(4) (General Regulations) of the San Juan
24

1 County Shoreline Master Program (SMP) provides, in pertinent part:

2 *Applications for non-exempt docks and piers associated*
3 *with single-family residences shall not be approved until:*

- 4 a) *it can be shown by the applicant that existing*
5 *facilities are not adequate or feasible for use;*
6 b) *alternative moorage is not adequate or feasible;*
7 c) *the possibility of a multiple owner or multiple user*
8 *facility has been thoroughly investigated.*

9 We conclude that the proposed dock is consistent with a) and b)
10 of these requirements. The adequacy of the existing facilities must
11 be viewed, we think, from the perspective of overall demand in the
12 neighborhood. We hold that the facilities in Fish Creek are not
13 adequate, and that no alternatives have been shown to be feasible.

14 However, we conclude that the submitted joint-use agreement
15 (May 12, 1989) is inadequate to carry out the joint-use objectives of
16 the master program. The owners of Lot 23 should automatically be
17 included in the use of the dock, without having to so request.
18 Recognizing the space limitations, moorage on the dock should be
19 available to Lot 23's owners only when not being used by the owner's
20 of Lots 24 and 25. But, application for a dock extension should be an
21 option provided for in the joint-use agreement, not a prerequisite for
22 the participation of Lot 23, on a space-available basis.

23 Furthermore, an easement across Lot 24 to the dock should be
24 granted to Lot 23 when that lot is sold by the present owners.

25 Condition 2 of the permit as issued should be revised to reflect

1 foregoing and a new joint-use agreement, consistent therewith, should
2 be submitted. Upon satisfaction of these measurements, we hold that
3 the project would be consistent with c) above.

4 III

5 Appellants allege that the joint use dock violates the following
6 goals and policy statements of the SMP:

7 16.40.302 SHORELINE USE

8 GOAL

9 To assure protection of the unique character of San Juan
10 County with its many islands while providing for uses of
11 the Shorelines which do not needlessly diminish the
quality of the shoreline environment. . . .

12 POLICIES

- 13 1. Uses which protect the potential long-term benefits to
14 the public against compromise for reasons of
short-term economic gain or convenience should be
fostered.

15

16 16.40.508 DOCKS AND PIERS

- 17 6. To spare San Juan County from the so-called "porcupine
18 effect" created by dozens of individual private docks
19 and piers on the same shoreline, preference should be
20 given to the use of private community structures in
all new waterfront subdivisions. In general,
21 preference should be given to the joint-use of a
single structure by several boat owners, as opposed to
22 the construction of several individual structures.

23 We conclude that these goals and policies are not violated by the
24 proposal. The dock will be an intrusion on the shoreline of modest
25 environmental effect with long-term benefits in terms of present and
likely future demands for moorage.

26 FINAL FINDINGS OF FACT,
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27 SHB No. 89-63 (10)

As a joint-use facility it exemplifies the master program's response to the "porcupine effect" problem. Moreover, as a factual matter, it is not likely that a "porcupine" could develop in the immediate vicinity.

IV

Section 16.40.508(1), (2), and (3) (General Regulations) are as follows:

1. Multiple use and expansion of existing facilities are preferred over construction of new docks and piers.
2. Mooring buoys shall be preferred over docks and piers on all marine shorelines except in cases of port, commercial or industrial development in the urban environment.
3. Moorage floats, unattached to a pier or a floating dock, are preferred over docks and piers.

We conclude that these criteria are not violated by the project. First of all, the project is a multiple use facility, located in a neighborhood where the existing community facilities are overcrowded. Existing mooring buoy capacity, like dockside capacity, is inadequate in light of overall demand. Mooring buoys in front of Lots 24 and 25 are not feasible because of the steep terrain of the upland bank.

V

Appellants argue that the proposal does not conform to several of the policies for shorelines of statewide significance (RCW 90.58.020),

1 as elaborated in the SMP, Section 16.40.603:

2 . . .

- 3 2. The natural character of the shorelines of statewide
4 significance should be preserved.
- 5 3. Shorelines of statewide significance should be used in
6 ways which will produce long-term benefits as opposed
7 to short-term benefits or conveniences.
- 8 a. Actions that would commit resources to
9 irreversible uses or would detrimentally alter
10 natural conditions characteristic of such
11 shorelines should be severely limited.
- 12 b. The short-term economic gain or convenience
13 associated with a proposed development should be
14 evaluated in relationship to long-term and
15 potentially costly impairments to the natural
16 environment.
- 17 c. The visual impact of every proposed project
18 should be thoroughly evaluated and the adverse
19 impacts should be minimized.
- 20 4. The natural resources and systems of shorelines
21 statewide significance should be protected. Areas
22 containing unusual or fragile natural resources or
23 systems should be left undeveloped.

24 In the instant project, only that portion of the dock lying
25 beyond extreme low tide is within shorelines of statewide
26 significance. RCW 90.58.030(2)(e)(iii). The cited additional
27 policies for such shorelines represent an order of preference
concerned primarily with environmental protection.

Docks are among the developments given priority by the SMA in
allowing alterations of natural conditions. See, Caminiti v. Boyle,

1 107 Wn.2d 662, 732 P.2d 989 (1987). Here the visual impact of the
2 project--the matter of greatest concern to appellants--will not, we
3 believe, be significantly adverse. Other environmental impacts are
4 minimal. We conclude that the policies for shorelines of statewide
5 significance will not be violated by the joint use dock.

6 VI

7 Appellants maintain that the project is inconsistent with the
8 following policies for the "suburban" and "aquatic" environments, as
9 respects visual impacts.

10 16.40.403. Suburban Environment

11 MANAGEMENT POLICIES

12 1. The residential character of Suburban
13 Environments should be protected and enhanced by
14 careful regulation of the type, location, scale
and timing of new shoreline development.

15 2. Suburban Developments should be restricted to
16 compatible residential, recreational, home
occupational and non-residential uses.

17 . . .

18 5. The character and appearance of suburban
19 shoreline development, problems of view
20 obstruction, and other visual and scenic
considerations, should be regulated by setback
standards in this Master Program.

21 16.40.407 AQUATIC ENVIRONMENT

22 . . .

23 4. Activities and uses of a permanent nature which
24 will substantailly degrade the existing
25 character or habitat value of an area should be
prohibited, except in those areas where the

1 public will be better served by approval of the
2 proposed activity or use.

- 3 5. All developments and activities using navigable
4 waters or their beds should be located and
5 designed to minimize inteference with surface
6 navigation, to minimize water quality impacts,
7 to minimize adverse visual impacts, and to allow
8 for safe, unhindered passage of fish or animals.

9 Nothing in these policy statements leads us to change our basic
10 conclusion that the visual impacts of the project are not a
11 substantial degradation of the existing character of the area.

12 VII

13 We have reviewed the remaining issues raised by appellants and
14 conclude that they are without merit.

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16 Any Finding of Fact which is deemed a Conclusion of Law is hereby
17 adopted as such.

18 From these Conclusions of Law, the Board enters this:

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ORDER

The decision of San Juan County to grant a substantial development permit for the joint-use dock by the Merediths and Gonsers is affirmed, as modified by Conclusion of Law II. The matter is remanded to the County for issuance of a permit consistent with this decision.

DONE this 31st day of August, 1990.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

[See Dissent]
JUDITH A. BENDOR, Chair

Wick Dufford
WICK DUFFORD, Member

Robert C. Schofield by 203
ROBERT C. SCHOFIELD, Member

[See Dissent]
GORDON F. CRANDALL, Member.

1 CRANDALL/BENDOR
2 DISSENT (AMENDED)

3
4 We dissent. In our view, the proposal is a direct violation of
5 the San Juan County Shoreline Master Program, and the permit should be
6 denied.

7 Section 16.40.508 provides in part that multiple use and
8 expansion of existing facilities are preferred over construction of
9 new docks and piers. An application for a non-exempt dock or pier for
10 a single-family residence shall not be approved until it can be shown
11 that existing facilities are not adequate or feasible for use, that
12 alternative moorage is not adequate or feasible, and that the
13 possibility of a multiple owner or multiple user facility has been
14 thoroughly investigated. Here, both of the applicants presently have
15 moorage in Fish Creek: the Gonsers at the community dock and the
16 Merediths at a DNR mooring buoy. There was no credible evidence that
17 these individuals' continued use of these facilities is in jeopardy.
18 In addition, applicant Gonsers' investigation of joint use with owners
19 of other existing facilities was half-hearted.

20 The community dock is presently full, with a waiting list. Plans
21 have been prepared to enlarge the facility from 29 to 49 slips. If
22 individual docks were permitted because the current facility is now
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1 too small, the support for enlarging the community facility would be
2 lessened, and county policy would be thwarted as a result.

3 The Merediths now enjoy a DNR buoy in Fish Creek. County policy
4 prefers mooring buoys over construction of new docks and piers.

5 This joint use dock will intrude significantly into the marine
6 view of the DeMuths because of the cove-like nature of the shoreline.
7 In our view, they have a right to complain that the county has
8 sacrificed their view to the desires of adjacent owners who already
9 have adequate community facilities.

10 The new evidence re-affirms our opinion. If the permit is to be
11 approved, we concur in the revisions to the permit relating to
12 participation by a new owner of Lot 23.

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16 GORDON F. CRANDALL, Member

17
18 Judith A. Bendor
19 JUDITH A. BENDOR, Chair

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ORDER ON RECONSIDERATION

On August 10, 1990 the Shorelines Hearings Board issued its Final Findings of Fact, Conclusions of Law and Order, with Dissent. On August 17, 1990 appellants DeMuth filed, by telefacsimile, a letter requesting reconsideration and evidence in support. A correction was filed on August 20, 1990. We construe these filings to be a Motion to Reconsider, a Motion to Introduce Newly Discovered Evidence, and a Motion for Additional Board Members. Response in Opposition to Reconsideration was filed by the Gonsers on August 22, 1990.

Having considered the foregoing, we hereby GRANT the Motion to introduce the newly discovered evidence and will give it the weight it is due.

We hereby GRANT IN PART the Motion to Reconsider by amending the Findings of Fact, Conclusions of Law, and Order, and the Dissent, to delete any references to permittees' age or to the periodicity of anyones' use of their property.

We hereby DENY appellants' request for an additional Board

1
2
3 member. Our decision in this case is 3-2 to affirm the County's
4 decision. For appellants to prevail in this case, they would need 4
5 votes in their favor. An additional Board member would not achieve
6 that result.

7 In all other respects the Motion to Reconsider is DENIED.

8 ORDER

9 DONE this 31st day of August, 1990.

10 SHORELINES HEARINGS BOARD

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12 HAROLD S. ZIMMERMAN, Presiding

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14 JUDITH A. BENDOR, Chair

15 Wick Dufford
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18 of this view. We are unable to find, however, that the project as
19 proposed would represent an aesthetic affront or significantly
20 compromise the quality of the shoreline environment.

21 XVII

22 We are not convinced that the physical conditions of the area are
23 likely to lead to the proliferation of individual docks outside of Fish
24

1 Creek. The advantage of the inlet is its relatively protected
2 character.

3 Moreover, any precedential effect which the instant project might
4 have would be for a joint-use, not a single-use facility.

5 XVIII

6 Under the San Juan County Master Program, the uplands of the
7 project site lie within an environment designated "suburban." Seaward
8 of the ordinary high water mark the environmental designation is
9 "aquatic."

10 XIX

11 Any Conclusion of Law deemed a Finding of Fact is hereby adopted
12 as such.

13 From these Findings of Fact, the Board comes to these Conclusions
14 of Law:

15 CONCLUSIONS OF LAW

16 I

17 The Shorelines Hearings Board has jurisdiction over the parties
18 and subject matter of this action. RCW 90.58.180. Appellants have the
19 burden of proof. RCW 90.58.140(7). We review substantial development
20 permits for consistency with the applicable master program and the
21 provisions of the Shoreline Management Act (SMA). RCW 90.58.140(2)(b).

22 II

23 Subsection 16.40.508(4) (General Regulations) of the San Juan
24

1 County Shoreline Master Program (SMP) provides, in pertinent part:

2 *Applications for non-exempt docks and piers associated*
3 *with single-family residences shall not be approved until:*

- 4 a) *it can be shown by the applicant that existing*
5 *facilities are not adequate or feasible for use;*
6 b) *alternative moorage is not adequate or feasible;*
7 c) *the possibility of a multiple owner or multiple user*
8 *facility has been thoroughly investigated.*

9 We conclude that the proposed dock is consistent with a) and b)
10 of these requirements. The adequacy of the existing facilities must
11 be viewed, we think, from the perspective of overall demand in the
12 neighborhood. We hold that the facilities in Fish Creek are not
13 adequate, and that no alternatives have been shown to be feasible.

14 However, we conclude that the submitted joint-use agreement
15 (May 12, 1989) is inadequate to carry out the joint-use objectives of
16 the master program. The owners of Lot 23 should automatically be
17 included in the use of the dock, without having to so request.
18 Recognizing the space limitations, moorage on the dock should be
19 available to Lot 23's owners only when not being used by the owner's
20 of Lots 24 and 25. But, application for a dock extension should be an
21 option provided for in the joint-use agreement, not a prerequisite for
22 the participation of Lot 23, on a space-available basis.

23 Furthermore, an easement across Lot 24 to the dock should be
24 granted to Lot 23 when that lot is sold by the present owners.

25 Condition 2 of the permit as issued should be revised to reflect

1 foregoing and a new joint-use agreement, consistent therewith, should
2 be submitted. Upon satisfaction of these measurements, we hold that
3 the project would be consistent with c) above.

4 III

5 Appellants allege that the joint use dock violates the following
6 goals and policy statements of the SMP:

7 16.40.302 SHORELINE USE

8 GOAL

9 To assure protection of the unique character of San Juan
10 County with its many islands while providing for uses of
11 the Shorelines which do not needlessly diminish the
quality of the shoreline environment. . . .

12 POLICIES

- 13 1. Uses which protect the potential long-term benefits to
14 the public against compromise for reasons of
short-term economic gain or convenience should be
fostered.

15 . . .

16 16.40.508 DOCKS AND PIERS

- 17 6. To spare San Juan County from the so-called "porcupine
18 effect" created by dozens of individual private docks
19 and piers on the same shoreline, preference should be
20 given to the use of private community structures in
all new waterfront subdivisions. In general,
21 preference should be given to the joint-use of a
single structure by several boat owners, as opposed to
22 the construction of several individual structures.

23 We conclude that these goals and policies are not violated by the
24 proposal. The deck will be intrusion on the shoreline of modest
25 environmental effect with long-term benefits in terms of present and
likely future demands for moorage.

26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
27 SHB No. 89-63

As a joint-use facility it exemplifies the master program's response to the "porcupine effect" problem. Moreover, as a factual matter, it is not likely that a "porcupine" could develop in the immediate vicinity.

IV

Section 16.40.508(1), (2), and (3) (General Regulations) are as follows:

1. Multiple use and expansion of existing facilities are preferred over construction of new docks and piers.
2. Mooring buoys shall be preferred over docks and piers on all marine shorelines except in cases of port, commercial or industrial development in the urban environment.
3. Moorage floats, unattached to a pier or a floating dock, are preferred over docks and piers.

We conclude that these criteria are not violated by the project. First of all, the project is a multiple use facility, located in a neighborhood where the existing community facilities are overcrowded. Existing mooring buoy capacity, like dockside capacity, is inadequate in light of overall demand. Mooring buoys in front of Lots 24 and 25 are not feasible because of the steep terrain of the upland bank.

V

Appellants argue that the proposal does not conform to several of the policies for shorelines of statewide significance (RCW 90.58.020),

1 as elaborated in the SMP, Section 16.40.603:

2 . . .

- 3 2. The natural character of the shorelines of statewide
4 significance should be preserved.
- 5 3. Shorelines of statewide significance should be used in
6 ways which will produce long-term benefits as opposed
7 to short-term benefits or conveniences.
- 8 a. Actions that would commit resources to
9 irreversible uses or would detrimentally alter
10 natural conditions characteristic of such
11 shorelines should be severely limited.
- 12 b. The short-term economic gain or convenience
13 associated with a proposed development should be
14 evaluated in relationship to long-term and
15 potentially costly impairments to the natural
16 environment.
- 17 c. The visual impact of every proposed project
18 should be thoroughly evaluated and the adverse
19 impacts should be minimized.
- 20 4. The natural resources and systems of shorelines
21 statewide significance should be protected. Areas
22 containing unusual or fragile natural resources or
23 systems should be left undeveloped.

24 In the instant project, only that portion of the dock lying
25 beyond extreme low tide is within shorelines of statewide
26 significance. RCW 90.58.030(2)(e)(iii). The cited additional
27 policies for such shorelines represent an order of preference
concerned primarily with environmental protection.

Docks are among the developments given priority by the SMA in
allowing alterations of natural conditions. See, Caminiti v. Boyle,

1 107 Wn.2d 662, 732 P.2d 989 (1987). Here the visual impact of the
2 project--the matter of greatest concern to appellants--will not, we
3 believe, be significantly adverse. Other environmental impacts are
4 minimal. We conclude that the policies for shorelines of statewide
5 significance will not be violated by the joint use dock.

6 VI

7 Appellants maintain that the project is inconsistent with the
8 following policies for the "suburban" and "aquatic" environments, as
9 respects visual impacts.

10 16.40.403. Suburban Environment

11 MANAGEMENT POLICIES

- 12 1. The residential character of Suburban
13 Environments should be protected and enhanced by
14 careful regulation of the type, location, scale
15 and timing of new shoreline development.
16 2. Suburban Developments should be restricted to
compatible residential, recreational, home
occupational and non-residential uses.

17 . . .

- 18 5. The character and appearance of suburban
19 shoreline development, problems of view
20 obstruction, and other visual and scenic
21 considerations, should be regulated by setback
controls, sign control, and site development
standards in this Master Program.

22 16.40.407 AQUATIC ENVIRONMENT

23 . . .

- 24 4. Activities and uses of a permanent nature which
25 will substantailly degrade the existing
26 character or habitat value of an area should be
27 prohibited, except in those areas where the

1 public will be better served by approval of the
2 proposed activity or use.

- 3 5. All developments and activities using navigable
4 waters or their beds should be located and
5 designed to minimize inteference with surface
6 navigation, to minimize water quality impacts,
7 to minimize adverse visual impacts, and to allow
8 for safe, unhindered passage of fish or animals.

9 Nothing in these policy statements leads us to change our basic
10 conclusion that the visual impacts of the project are not a
11 substantial degradation of the existing character of the area.

12 VII

13 We have reviewed the remaining issues raised by appellants and
14 conclude that they are without merit.

15 X

16 Any Finding of Fact which is deemed a Conclusion of Law is hereby
17 adopted as such.

18 From these Conclusions of Law, the Board enters this:

ORDER

The decision of San Juan County to grant a substantial development permit for the joint-use dock by the Merediths and Gonsers is affirmed, as modified by Conclusion of Law II. The matter is remanded to the County for issuance of a permit consistent with this decision.

DONE this 10th day of August, 1990.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

[See Dissent]

JUDITH A. BENDOR, Chair

Wick Dufford
WICK DUFFORD, Member

Robert C. Schofield
ROBERT C. SCHOFIELD, Member

[See Dissent]

GORDON F. CRANDALL, Member.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
SHB No. 89-63

1 CRANDALL/BENDOR
2 DISSENT

3 We dissent. In our view, the proposal is a direct violation of
4 the San Juan County Shoreline Master Program, and the permit should be
5 denied.

6 Section 16.40.508 provides in part that multiple use and
7 expansion of existing facilities are preferred over construction of
8 new docks and piers. An application for a non-exempt dock or pier for
9 a single-family residence shall not be approved until it can be shown
10 that existing facilities are not adequate or feasible for use, that
11 alternative moorage is not adequate or feasible, and that the
12 possibility of a multiple owner or multiple user facility has been
13 thoroughly investigated. Here, both of the applicants presently have
14 moorage in Fish Creek: the Gonsers at the community dock and the
15 Merediths at a DNR mooring buoy. There was no credible evidence that
16 these individuals' continued use of these facilities is in jeopardy.
17 In addition, applicant Gonsers' investigation of joint use with owners
18 of other existing facilities was half-hearted.

19 The community dock is presently full, with a waiting list. Plans
20 have been prepared to enlarge the facility from 29 to 49 slips. If
21 individual docks were permitted because the current facility is now
22
23
24
25
26
27

1 too small, the support for enlarging the community facility would be
2 lessened, and county policy would be thwarted as a result.

3 The Merediths now enjoy a DNR buoy in Fish Creek. County policy
4 prefers mooring buoys over construction of new docks and piers. The
5 age of the appliciants is not a legal justification to depart from a
6 shoreline land-use policy.

7 This joint use dock will intrude significantly into the marine
8 view of the DeMuths because of the cove-like nature of the shoreline.
9 In our view, they have a right to complain that the county has
10 sacrificed their view to the desires of adjacent owners who already
11 have adequate community facilities.

12 If the permit is to be approved, we concur in the revisions to
13 the permit relating to participation by a new owner of Lot 23.

14
15
16 
17 GORDON F. CRANDALL, Member

18 
19 JUDITH A. BENDOR, Chair